



In late April 2017, Dartmouth Health decided to close the REI Division which was part of its OB/GYN Department. At the time, the REI Division was “marginally profitable.” *Porter v. Dartmouth-Hitchcock Med. Ctr.*, 92 F.4th 129, 141 (2d Cir. 2024). It was closed effective June 2017. Dr. Porter’s employment with Dartmouth Health ended on June 3, 2017. *Id.* at 142. Dartmouth Health insists that Dr. Porter lost her job for the simple reason that it made a business decision to close the REI Division, and, as a result, all doctors employed in that division lost their jobs.

Dartmouth Health’s decision to close the REI Division and fire the doctors came as a shock. Senior management told the staff and the press that the reason for closing the REI Division was a shortage of nurses and the resulting inability to provide care that was consistent with the reputation of Dartmouth Health. *Id.* at 140–41. Dr. Ed Merrens, the most senior Dartmouth Health officer at the time and the person who claims to have made the decision on closure and to terminate the REI physicians, addressed the nursing shortage issue in a moment of candor in an email that he wrote to the head of Human Resources:

[w]hile on the surface we are pinning the dissolution of our reproductive endocrinology program on our failure to maintain and recruit nurses for this work, it is ultimately the dysfunction of the physicians who worked in this area for years (as well as recent hires) and ultimately a failure of leadership, for which I hold Leslie [*i.e.*, Dr. DeMars] fully accountable.

The fact that failures of such programs due to nursing shortages are not common and we’ll be referring patients to a similar, rural academic REI center in Burlington, Vermont, will make our explanation to the public, patients and the media, well, rather thin.

*Id.* at 141–42 (emphases omitted). Dr. Maria Padin, the Chief Medical Officer of Dartmouth Health, also weighed in on the nursing shortage saying that we “did a dis-service if we only attributed the closure to a nursing [shortage.]” (E-mail from Dr. Maria D. Padin to Dr. Edward J. Merrens (May 12, 2017), attached as Ex. 2.) There is no dispute that the nursing shortage

explanation was thin. That is, however, the position that Dartmouth Health has taken in this case. It will need to convince the jury that the nursing shortage was an actual business reason and not a pretext to get rid of Dr. Porter because of her whistleblowing and disability.

Dr. Conroy was not CEO when the decision was made to close the REI Division. She became CEO in August 2017. Shortly after beginning work, she received a briefing from Dr. Ed Merrens. (Conroy Dep. 27, Sept. 18, 2019, attached as Ex. 1). After the briefing, she took the time to sit for interviews with the Valley News and Concord Monitor. Not surprisingly, reporters asked about the closure of the REI Division and, in particular, what were the reasons behind the decision. Her answer was a complete departure from what Dartmouth Health had been saying. Gone was the nursing shortage excuse and, instead, the reason leading directly to the closure was a declining birth rate in New Hampshire and the corresponding problems associated with attracting young providers, i.e., doctors who were unwilling to come to New Hampshire because of the shortage of women who might have children. (*See* Ex. 1, at 23.)

Speaking as the CEO, Dr. Conroy's comments are Dartmouth Health's comments. She may not have participated in the decision to close the REI Division, but when Dr. Conroy chose to make public statements to the press about a declining birth rate in New Hampshire leading to problems recruiting young doctors, she ceased to be an uninvolved person with no relevant information. The reason that she gave the press is inconsistent with what Dartmouth Health told its entire staff and what it has been asserting in this lawsuit as the reason for closing the REI Division.

Dr. Conroy's testimony is relevant to the issues before the Court, and the jury is entitled to hear it. The motion to quash the subpoena for her appearance should be denied.

Dated: February 28, 2025

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